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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,879	10/29/2003	Mark Andrew Griesbach	LEGPRO P02AUS	7810
20210	7590	05/14/2004	EXAMINER	
DAVIS & BUJOLD, P.L.L.C. FOURTH FLOOR 500 N. COMMERCIAL STREET MANCHESTER, NH 03101-1151			RICHARDSON, JOHN A	
			ART UNIT	PAPER NUMBER
			3641	

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/695,879

Applicant(s)

GRIESBACH ET AL.

Examiner

John Richardson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Non Final Rejection***

1). The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2). The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3). The disclosure is objected to because of the following informalities:

- Items 34, 36, 44, 48 in Figures 1-2 not described in the specification text.

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- Specification page 7 refers to item 46- Flip-top closure- in Figure 2D; Figure 2D does not identify such a feature.

Appropriate correction is required.

4). Claims 1 to 21, 24 are rejected to under 35 U.S.C. 112, second paragraph, as failing to distinctly claim the invention.

Claim 1 claims a system comprising a transport container sized to accommodate premeasured charges (wherein) each of the charges comprise. Note that the charges are never positively claimed as part of said system. As written, the container merely needs to be capable of accommodating these charges which are functionally claimed. It is suggested to amend the claim to positively claim the charges such as by adding "a plurality of .... Charges" after "gunpowder" in line 5 of claim 1. The claims will be treated as the combination rather than just the subcombination of a container capable of holding charges.

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6). Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 24 recites the limitation "**at least one of the tubes**" in lines 1-2.. There is insufficient antecedent basis for this limitation in the claim.

7). Claims 1-13, 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation **a plurality of premeasured charges of gunpowder** and further **each of the plurality of individual charges of gunpowder comprising a tube**; the claims are vague, indefinite and incomplete as to whether the claims are directed to **a plurality of tubes** or **a single tube** sized to accommodate individual premeasured charges of gunpowder.

8). Claims 14-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 14 recites the limitation **a plurality of premeasured charges of gunpowder** and further **each of the plurality of individual charges of gunpowder comprising a tube**; the claims are vague, indefinite and

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incomplete as to whether the claims are directed to **a plurality of tubes** or **a single tube** sized to accommodate individual premeasured charges of gunpowder.

9). Claims 22-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 22 recites the limitation **a plurality of premeasured charges of gunpowder** and further **each of the plurality of individual charges of gunpowder comprising a tube**; the claims are vague, indefinite and incomplete as to whether the claims are directed to **a plurality of tubes** or **a single tube** sized to accommodate individual premeasured charges of gunpowder.

10). Claims 1, 2, 5, 14, are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker (U.S. 6,629,597) in view of Barrett (U.S. 5,726,378).

The reference discloses a method and apparatus for packaging explosive products for transportation comprising a container (item 10) with a removable covers (items 22, 24, 26, 28), containing a plurality of explosive charges (items 12), relating to claim 2, the reference discloses a removable caps (items 22, 24, 26, & 28) and the reference

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discloses the claimed invention except for citing the moisture content of the explosive charges at less than 5%, with individual premeasured charges of gunpowder specified with between 20-200 grains of gunpowder (claim 5). It would have been obvious to one of ordinary skill in the art at the time of the invention to have specified the moisture content of the explosive material at less than 5%, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art, *In re Aller*, 105 USPQ 233, and recognizing that the secondary reference, Barrett, (see for example, Column 3, line 49, Column 6, line 66, Column 7, line 35) states that less than 5% moisture content for explosive material and blackpowder at 100 grains by weight (see for example, Column 3, lines 3-14) are well known in the art.

11). Claims 3-4, 6-13, 15-21, 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12). Claims 22-23 would be allowable if rewritten or amended to overcome the objections and rejections under 35 U.S.C. 112, second paragraph, set forth in this Office action.

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13). The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

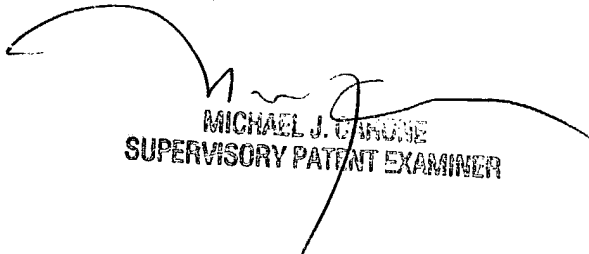
14). Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Richardson whose telephone number is (703) 305 0764. The examiner can normally be reached on Monday to Thursday from 7.00 AM to 4.30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306 4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 305 7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 1113.

John Richardson, PE,

May 06 2004.



MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER



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